IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

CRL.A.No. 966 of 2001()

AGAINST THE ORDER DATED 25/06/2001 IN CC.583/1998, C.C.635/98 AND CC.644/1998 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KUNNAMKULAM

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APPELLANT: COMPLAINANT

PRABHAKARAN
S/O.MAKKAPPU
KANDAMPULLY HOUSE
CHOWALLUR DESOM
KANDANASSERY VILLAGE
TALAPPILLY TALUK, THRISSUR DISTRICT.

BY ADV. SRI.P.VIJAYA BHANU
SMT.P.MAYA

RESPONDENTS: ACCUSED AND STATE

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1. MADHAVAN
S/O.SANKU
THAIKKOOTTATHIL HOUSE
PATTANAM DESOM, CHITTATTUKARA VILLAGE
PARAVUR TALUK, ERNAKULAM DISTRICT.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

BY ADV. SRI.SHAJI P.CHALY
SRI.S.RAJEEV
BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 08/10/2007, ALONG WITH CRA NOS. 1057 & 1058 OF 2001, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.A.No.966, 1057 & 1058 of 2001

Dated this the 8th day of October, 2007

JUDGMENT

The appellant in these three appeals is the complainant in the respective C.C.s. The amount involved is Rs.9 lakh, Rs.10 lakh and Rs.1.5 lakh respectively.

2. The trial court acquitted the accused mainly on the ground that it appeared that the impugned cheques were issued towards security for the alleged borrowal and the decision of this court that the cheques issued as security would not attract the offence under Section 138 of Negotiable Instruments Act was apparently applied. In the decision in **Sreenivasan vs. State of Kerala (1999 (3) KLT 849**) stands overruled vide the decision reported in **ICDS Ltd. vs. Beena Shabeer (2002(3) KLT 218 (SC))**. I find that there is no proper discussion or finding as to the rest of the contentions. In the circumstances, the findings of the court below in the common judgment in C.C.Nos.583/98, 635/98 and 644/98 is herewith set aside. The matter is remitted back to the court below for fresh

consideration and disposal on merits after affording opportunities to the parties to adduce further evidence if they so desire. The matter stands posted before the court below on 12.11.2007.

The Crl.Appeals are allowed accordingly.

K.R.UDAYABHANU,
JUDGE

csl